

108TH CONGRESS
1ST SESSION

S. 1438

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JULY 21), 2003

Ms. CANTWELL (for herself, Mr. INOUE, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spokane Tribe of Indi-
5 ans of the Spokane Reservation Grand Coulee Dam Equi-
6 table Compensation Settlement Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) From 1927 to 1931, at the direction of
4 Congress, the Corps of Engineers investigated the
5 Columbia River and its tributaries to determine sites
6 at which power could be produced at low cost.

7 (2) The Corps of Engineers—

8 (A) identified a number of sites, including
9 the site at which the Grand Coulee Dam is lo-
10 cated; and

11 (B) recommended that power development
12 at those sites be performed by local govern-
13 mental authorities or private utilities under the
14 Federal Power Act (16 U.S.C. 791a et seq.).

15 (3) Under section 10(e) of that Act (16 U.S.C.
16 803(e)), a licensee is required to compensate an In-
17 dian tribe for the use of land under the jurisdiction
18 of the Indian tribe.

19 (4) In August 1933, the Columbia Basin Com-
20 mission, an agency of the State of Washington, re-
21 ceived a preliminary permit from the Federal Power
22 Commission for water power development at the
23 Grand Coulee site.

24 (5) In the mid-1930's, the Federal Government,
25 which is not subject to the Federal Power Act (16
26 U.S.C. 791a et seq.)—

1 (A) federalized the Grand Coulee Dam
2 project; and

3 (B) began construction of the Grand Cou-
4 lee Dam.

5 (6) At the time at which the Grand Coulee
6 Dam project was federalized, the Federal Govern-
7 ment recognized that the Spokane Tribe and the
8 Confederated Tribes of the Colville Reservation had
9 compensable interests in the Grand Coulee Dam
10 project, including compensation for—

11 (A) the development of hydropower;

12 (B) the extinguishment of a salmon fishery
13 on which the Spokane Tribe was almost com-
14 pletely financially dependent; and

15 (C) the inundation of land with loss of po-
16 tential power sites previously identified by the
17 Spokane Tribe.

18 (7) In the Act of June 29, 1940, Congress—

19 (A) in the first section (16 U.S.C. 835d)
20 granted to the United States—

21 (i) all rights of Indian tribes in land
22 of the Spokane Tribe and Colville Indian
23 Reservations that were required for the
24 Grand Coulee Dam project; and

1 (ii) various rights-of-way over other
2 land under the jurisdiction of Indian tribes
3 that were required in connection with the
4 project; and

5 (B) in section 2 (16 U.S.C. 835e) provided
6 that compensation for the land and rights-of-
7 way was to be determined by the Secretary of
8 the Interior in such amounts as the Secretary
9 determined to be just and equitable.

10 (8) In furtherance of that Act, the Secretary of
11 the Interior paid—

12 (A) to the Spokane Tribe, \$4,700; and

13 (B) to the Confederated Tribes of the
14 Colville Reservation, \$63,000.

15 (9) In 1994, following 43 years of litigation be-
16 fore the Indian Claims Commission, the United
17 States Court of Federal Claims, and the United
18 States Court of Appeals for the Federal Circuit,
19 Congress ratified an agreement between the Confed-
20 erated Tribes of the Colville Reservation and the
21 United States that provided for damages and annual
22 payments of \$15,250,000 in perpetuity, adjusted an-
23 nually, based on revenues from the sale of electric
24 power from the Grand Coulee Dam project and

1 transmission of that power by the Bonneville Power
2 Administration.

3 (10) In legal opinions issued by the Office of
4 the Solicitor of the Department of the Interior, a
5 Task Force Study conducted from 1976 to 1980 or-
6 dered by the Committee on Appropriations of the
7 Senate, and hearings before Congress at the time at
8 which the Confederated Tribes of the Colville Res-
9 ervation Grand Coulee Dam Settlement Act (Public
10 Law 103–436; 108 Stat. 4577) was enacted, it has
11 repeatedly been recognized that—

12 (A) the Spokane Tribe suffered damages
13 similar to those suffered by, and had a case le-
14 gally comparable to that of, the Confederated
15 Tribes of the Colville Reservation; but

16 (B) the 5-year statute of limitations under
17 the Act of August 13, 1946 (25 U.S.C. 70 et
18 seq.) precluded the Spokane Tribe from bring-
19 ing a civil action for damages under that Act.

20 (11) The inability of the Spokane Tribe to
21 bring a civil action before the Indian Claims Com-
22 mission can be attributed to a combination of fac-
23 tors, including—

1 (A) the failure of the Bureau of Indian Af-
2 fairs to carry out its advisory responsibilities in
3 accordance with that Act; and

4 (B) an attempt by the Commissioner of In-
5 dian Affairs to impose improper requirements
6 on claims attorneys retained by Indian tribes,
7 which caused delays in retention of counsel and
8 full investigation of the potential claims of the
9 Spokane Tribe.

10 (12) As a consequence of construction of the
11 Grand Coulee Dam project, the Spokane Tribe—

12 (A) has suffered the loss of—

13 (i) the salmon fishery on which the
14 Spokane Tribe was dependent;

15 (ii) identified hydropower sites that
16 the Spokane Tribe could have developed;
17 and

18 (iii) hydropower revenues that the
19 Spokane Tribe would have received under
20 the Federal Power Act (16 U.S.C. 791a et
21 seq.) had the project not been federalized;
22 and

23 (B) continues to lose hydropower revenues
24 that the Federal Government recognized were

1 owed to the Spokane Tribe at the time at which
2 the project was constructed.

3 (13) More than 39 percent of the land owned
4 by Indian tribes or members of Indian tribes that
5 was used for the Grand Coulee Dam project was
6 land of the Spokane Tribe.

7 **SEC. 3. STATEMENT OF PURPOSE.**

8 The purpose of this Act is to provide fair and equi-
9 table compensation to the Spokane Tribe, using the same
10 proportional basis as was used in providing compensation
11 to the Confederated Tribes of the Colville Reservation, for
12 the losses suffered as a result of the construction and op-
13 eration of the Grand Coulee Dam project.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) SECRETARY.—The term “Secretary” means
17 the Secretary of the Treasury.

18 (2) CONFEDERATED TRIBES ACT.—The term
19 “Confederated Tribes Act” means the Confederated
20 Tribes of the Colville Reservation Grand Coulee
21 Dam Settlement Act (Public Law 103–436; 108
22 Stat. 4577).

23 (3) FUND ACCOUNT.—The term “Fund Ac-
24 count” means the Spokane Tribe of Indians Settle-
25 ment Fund Account established under section 5(a).

1 (4) SPOKANE TRIBE.—The term “Spokane
2 Tribe” means the Spokane Tribe of Indians of the
3 Spokane Reservation, Washington.

4 **SEC. 5. SETTLEMENT FUND ACCOUNT.**

5 (a) ESTABLISHMENT OF ACCOUNT.—There is estab-
6 lished in the Treasury an interest-bearing account to be
7 known as the “Spokane Tribe of Indians Settlement Fund
8 Account”.

9 (b) DEPOSIT OF AMOUNTS.—

10 (1) INITIAL DEPOSIT.—On the date on which
11 funds are made available to carry out this Act, the
12 Secretary shall deposit in the Fund Account, as pay-
13 ment and satisfaction of the claim of the Spokane
14 Tribe for use of land of the Spokane Tribe for gen-
15 eration of hydropower for the period beginning on
16 June 29, 1940, and ending on November 2, 1994,
17 an amount that is equal to 39.4 percent of the
18 amount paid to the Confederated Tribes of the
19 Colville Reservation under section 5(a) of the Con-
20 federated Tribes Act, adjusted to reflect the change,
21 during the period beginning on the date on which
22 the payment described in subparagraph (A) was
23 made to the Confederated Tribes of the Colville Res-
24 ervation and ending on the date of enactment of this

1 Act, in the Consumer Price Index for all urban con-
2 sumers published by the Department of Labor.

3 (2) SUBSEQUENT DEPOSITS.—On September
4 30 of the first fiscal year that begins after the date
5 of enactment of this Act, and on September 30 of
6 each of the 5 fiscal years thereafter, the Secretary
7 shall deposit in the Fund Account an amount that
8 is equal to 7.88 percent of the amount authorized to
9 be paid to the Confederated Tribes of the Colville
10 Reservation under section 5(b) of the Confederated
11 Tribes Act through the end of the fiscal year during
12 which this Act is enacted, adjusted to reflect the
13 change, during the period beginning on the date on
14 which the payment to the Confederated Tribes of the
15 Colville Reservation was first made and ending on
16 the date of enactment of this Act, in the Consumer
17 Price Index for all urban consumers published by
18 the Department of Labor.

19 (c) ANNUAL PAYMENTS.—On September 1 of the
20 first fiscal year after the date of enactment of this Act,
21 and annually thereafter, the Secretary shall pay to the
22 Spokane Tribe an amount that is equal to 39.4 percent
23 of the annual payment authorized to be paid to the Con-
24 federated Tribes of the Colville Reservation under section
25 5(b) for the Confederated Tribes Act for the fiscal year.

1 **SEC. 6. USE AND TREATMENT OF SETTLEMENT FUNDS.**

2 (a) TRANSFER OF FUNDS TO SPOKANE TRIBE.—

3 (1) INITIAL TRANSFER.—Not later than 60
4 days after the date on which the Secretary receives
5 from the Spokane Business Council written notice of
6 the adoption by the Spokane Business Council of a
7 resolution requesting that the Secretary execute the
8 transfer of settlement funds described in section
9 5(a), the Secretary shall transfer all or a portion of
10 the settlement funds, as appropriate, to the Spokane
11 Business Council.

12 (2) SUBSEQUENT TRANSFERS.—If not all funds
13 described in section 5(a) are transferred to the Spo-
14 kane Business Council under an initial transfer re-
15 quest described in paragraph (1), the Spokane Busi-
16 ness Council may make subsequent requests for, and
17 the Secretary of the Treasury may execute subse-
18 quent transfers of, those funds.

19 (b) USE OF INITIAL PAYMENT FUNDS.—Of the set-
20 tlement funds described in subsections (a) and (b) of sec-
21 tion 5—

22 (1) 25 percent shall be—

23 (A) reserved by the Spokane Business
24 Council; and

1 (B) used for discretionary purposes of gen-
2 eral benefit to all members of the Spokane
3 Tribe; and

4 (2) 75 percent shall be used by the Spokane
5 Business Council to carry out—

6 (A) a resource development program;

7 (B) a credit program;

8 (C) a scholarship program; or

9 (D) a reserve, investment, and economic
10 development program.

11 (c) USE OF ANNUAL PAYMENT FUNDS.—Annual
12 payments made to the Spokane Tribe under section 5(c)
13 may be used or invested by the Spokane Tribe in the same
14 manner and for the same purposes as other tribal govern-
15 mental funds.

16 (d) APPROVAL BY SECRETARY.—Notwithstanding
17 any other provision of law—

18 (1) the approval of the Secretary of the Treas-
19 ury or the Secretary of the Interior for any payment,
20 distribution, or use of the principal, interest, or in-
21 come generated by any settlement funds transferred
22 or paid to the Spokane Tribe under this Act shall
23 not be required; and

24 (2) the Secretary of the Treasury and the Sec-
25 retary of the Interior shall have no trust responsi-

1 bility for the investment, supervision, administration,
 2 or expenditure of those funds after the date on
 3 which the funds are transferred to or paid to the
 4 Spokane Tribe.

5 (e) TREATMENT OF FUNDS FOR CERTAIN PUR-
 6 POSES.—The payments and distributions of any portion
 7 of the principal, interest, and income generated by the set-
 8 tlement funds described in section 5 shall be treated in
 9 the same manner as payments or distributions under sec-
 10 tion 6 of the Saginaw Chippewa Indian Tribe of Michigan
 11 Distribution of Judgment Funds Act (Public Law 99–346;
 12 100 Stat. 677).

13 (f) TRIBAL AUDIT.—After the date on which the set-
 14 tlement funds described in section 5 are transferred or
 15 paid to the Spokane Tribe, the funds—

16 (1) shall be considered to be Spokane Tribe
 17 governmental funds; and

18 (2) shall be subject to an annual tribal govern-
 19 mental audit.

20 **SEC. 7. SATISFACTION OF CLAIMS.**

21 Payment by the Secretary under section 5 constitutes
 22 full satisfaction of the claim of Spokane Tribe to a fair
 23 share of the annual hydropower revenues generated by the
 24 Grand Coulee Dam project from June 29, 1940, through

1 the fiscal year preceding the fiscal year in which this Act
2 is enacted.

3 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums
5 as are necessary to carry out this Act.

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